

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA
and the STATE OF ILLINOIS

Plaintiffs,

v.

HAMILTON SUNDSTRAND
CORPORATION,

Defendant.

Civil Action No. 3:08-cv-50129

**STIPULATION AND NON-MATERIAL MODIFICATION TO CONSENT DECREE
SETTLING COST REIMBURSEMENT DISPUTE BETWEEN THE UNITED STATES
AND HAMILTON SUNDSTRAND CORPORATION**

This Stipulation documents an agreed resolution of a dispute concerning demands by Plaintiff the UNITED STATES OF AMERICA (“United States”), acting on behalf of the Environmental Protection Agency (“EPA”), that the Defendant, HAMILTON SUNDSTRAND CORPORATION (“HSC”), reimburse certain costs that the EPA claims it incurred for response activities related to the Hamilton Sundstrand Property, which is within the boundary of the Source Area 9/10 portion of the Southeast Rockford Groundwater Contamination Superfund Site. To the extent a capitalized term used herein is not defined herein, such capitalized term shall have the same meaning as in the 2008 Consent Decree entered in this case (ECF. No. 14-2).

This Stipulation clarifies and resolves HSC’s obligation to pay an agreed portion of certain disputed past costs to EPA and to prospectively reimburse EPA for “Future Response Costs” in accordance with the 2008 Consent Decree. The filing of this Stipulation does not require any immediate action by the Court.

Brief Background

The Southeast Rockford Groundwater Contamination Superfund Site (the “Site” or the “SERGWCSS”) is an approximately 10-square mile mixed residential and commercial area in the southeastern portion of the city of Rockford where groundwater is contaminated with volatile organic compounds. Because the Site is fairly large and complex, EPA broke it up into three portions termed Operable Units (“OUs”) for ease of addressing Site contaminants. In 1991, EPA and the Illinois Environmental Protection Agency (“IEPA”) made an initial cleanup decision in a Record of Decision (“ROD”). While other sources of groundwater impact exist throughout the Site, a 1995 ROD identified four source specific areas as potentially contributing to the regional groundwater conditions. Finally, in 2002, EPA and IEPA issued a third ROD (the “2002 ROD”) focused on addressing these four areas, “Source Areas 4, 7, 9/10, and 11.” More specifically, the 2002 ROD addressed the cleanup of soil and contaminated leachate at Source Areas 4, 7, 9/10, and 11.

For many years, HSC has owned and operated an industrial facility on the Hamilton Sundstrand Property located within the boundaries of Source Area 9/10 at the Site. In 2008, the court approved and entered a consent decree in this case that the parties had negotiated to address certain requirements related to the Hamilton Sundstrand Property (the “2008 Consent Decree”). ECF No. 14-2. The Hamilton Sundstrand Property is described and depicted in the 2008 Consent Decree. ECF No. 5-4 at PageID# 1180-1184 and ECF No. 14-2 at PageID# 150 (Consent Decree ¶ 4 and Appendix D).

In the 2008 Consent Decree, HSC agreed to complete the cleanup remedy that the 2002 ROD prescribed for the Hamilton Sundstrand Property, subject to certain technical, remedial, and procedural constraints and procedural options and flexibilities contained within the 2008 Consent Decree as well as the Statement of Work and the Remedial Action Process Flow

Diagram. The 2008 Consent Decree also required HSC to reimburse the United States and the State of Illinois (the “State”) for certain “Future Response Costs” that they incur as “related to the Hamilton Sundstrand Property,” provided those costs are “not inconsistent with the National Contingency Plan.” Such costs include the United States’ and the State’s costs of overseeing HSC’s cleanup activities. ECF No. 14-2 at PageID# 4-9, 48-49 (Consent Decree ¶¶ 4, 55). IEPA “Future Response Costs” have been reimbursed by EPA under an EPA-IEPA Superfund Cooperative Agreement, and U.S. Department of Justice (“DOJ”) “Future Response Costs” are reimbursable by EPA under an EPA-DOJ Inter-Agency Agreement, so each reference to “EPA” costs in this Stipulation includes all such IEPA costs and DOJ costs reimbursed by EPA.

Pursuant to the process described above, EPA sent HSC several bills totaling \$604,183.25 for claimed EPA Future Response Costs incurred from August 22, 2012, to August 21, 2019 (the “2012-2019 Bills”).¹ EPA’s 2012-2019 Bills included two categories of costs: (i) EPA direct costs of response activities focused on and directly related to the Hamilton Sundstrand Property, together with associated indirect costs computed in accordance with EPA’s standard indirect cost accounting methodology (referred to collectively here as “Hamilton Sundstrand Property-Specific Costs”); and (ii) 25% of EPA’s costs of Site-wide response activities not uniquely associated with any one of the four identified Source Areas at the Site, such as the cost of preparing statutorily-mandated five year reviews for the Site as a whole (referred to collectively here as “Site-Wide Costs”). EPA contended that both those cost categories qualified as “Future Response Costs” that HSC was required to reimburse under the 2008 Consent Decree. HSC then requested that EPA and DOJ provide HSC with documentation that would enable it to determine whether the costs were “consistent with the National

¹ Including bills issued on December 18, 2013, December 16, 2015, and September 24, 2020.

Contingency Plan” and “related to the Hamilton Sundstrand Property.” Based on the documentation provided, HSC asserts that it was unable to undertake these evaluations and make an independent determination as to the appropriateness of the costs included in the 2012-2019 Bills. *See* ECF No. 14-2 at PageID# 48-49 (Consent Decree ¶ 55).

In this context, HSC questioned whether the costs EPA sought in the 2012-2019 Bills were eligible for reimbursement under the 2008 Consent Decree as “Future Response Costs.” Independent of the issues HSC raised related to the adequacy of documentation, HSC disagreed with EPA’s approach in classifying 25% of the Site-Wide Costs as costs “related to the Hamilton Sundstrand Property.” In part, HSC maintains that certain of the Site-Wide Costs in question were related to efforts undertaken by EPA or IEPA in or as to areas other than the Hamilton Sundstrand Property or areas with groundwater that is not downgradient or potentially impacted by HSC or the Hamilton Sundstrand Property. HSC followed the dispute resolution procedures in the 2008 Consent Decree by timely sending the Plaintiffs written notice of these disputes and depositing funds in escrow that covered the full amounts sought in the 2012-2019 Bills (the “Escrowed Funds”).

The United States and HSC (referred to hereinafter as the “Parties”) negotiated an agreed resolution of their disagreements during the informal dispute resolution consultations required by the 2008 Consent Decree. The Parties’ agreement includes two main features:

- First, the Parties agreed on a mutually-acceptable division of the Escrowed Funds for resolution of their disagreements over the amounts sought in the 2012-2019 Bills.
- Second, the Parties agreed to clarify and simplify the process they will follow for the billing and payment of “Future Response Costs” incurred by EPA after the time period covered by the 2012-2019 Bills.

The specific terms of the Parties' agreements on these points are set forth in detail below.

This Stipulation resolves the Parties' disagreements over the amounts sought in the 2012-2019 Bills without any admission by HSC that the costs were incurred for response activities related to the Hamilton Sundstrand Property and/or were incurred consistent with the National Contingency Plan. This Stipulation does not constitute a waiver of, and HSC in no way waives, HSC's rights under the 2008 Consent Decree to dispute "Future Response Cost" sought in future bills from the Plaintiffs, including whether such costs are related to the Hamilton Sundstrand Property and not inconsistent with the National Contingency Plan.

Agreed Terms of Settlement

1. As to the 2012-2019 Bills. The Parties to this Stipulation hereby agree that as of the Effective Date specified below, the pending disputes over the 2012-2019 Bills are resolved on the terms set forth in this Paragraph 1.

a. Within forty-five (45) days of the Effective Date, HSC shall cause \$500,000 from the Escrowed Funds to be disbursed to EPA in satisfaction of the 2012-2019 Bills. HSC shall make this disbursement to EPA in accordance with the payment instructions in Subparagraph 55.a.(i) of the 2008 Consent Decree. Upon EPA's receipt of this disbursement, the funds will be credited and classified as "Future Response Costs" for all purposes under the 2008 Consent Decree, including but not limited to the purposes of affording the Parties certain protections and benefits under Section XXI (Covenants Not to Sue by Plaintiffs), Section XXII (Covenants by Settling Defendant), and Section XXIII (Effect of Settlement; Contribution Protection).

b. The total amount to be paid to EPA pursuant to Subparagraph 1.a. shall be deposited in the SERGWCSS-Source Area 9/10 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response

actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

c. The United States agrees to compromise and forego recovery from HSC of the remaining \$104,183.25 sought by the 2012-2019 Bills. Although HSC shall not be required to pay that portion of the amount sought in the 2012-2019 Bills, those costs shall be classified as “Future Response Costs” for all other purposes under the 2008 Consent Decree, including but not limited to the purposes of affording the Parties certain protections and benefits under Section XXI (Covenants Not to Sue by Plaintiffs), Section XXII (Covenants by Settling Defendant), and Section XXIII (Effect of Settlement; Contribution Protection).

d. At any time after the disbursement to EPA under Paragraph 1.a, the balance of the Escrowed Funds (including all accrued interest) shall be disbursed to HSC.

2. As to Future Bills for Future Response Costs. The Parties hereby agree that, as of the Effective Date specified below, the process for billing and payment of Future Response Costs sought by EPA under the 2008 Consent Decree shall be clarified, simplified, and implemented as set forth in this Paragraph 2.

a. On a periodic basis, EPA will send HSC a bill requiring payment of Future Response Costs for the time period covered by the bill, consisting of: (i) the Hamilton Sundstrand Property-Specific Costs incurred and paid by EPA in the covered time period; plus (ii) an additional mutually-agreed payment toward EPA’s Site-Wide Costs (the “Agreed Site-Wide Cost Amount”). The covered time period for the first EPA bill will commence with costs paid on and after August 22, 2019.

b. Each EPA bill will be accompanied by an EPA Itemized Cost Summary identifying Hamilton Sundstrand Property-Specific Costs consisting of EPA’s direct costs

of response activities focused on and directly related to the Hamilton Sundstrand Property (currently billed to EPA Site ID 05DK, OU Code 04), together with associated indirect costs computed in accordance with EPA's standard indirect cost accounting methodology. If the EPA bill includes DOJ costs, then the bill will also be accompanied by a DOJ-prepared cost summary identifying DOJ's direct costs of activities focused on and directly related to the Hamilton Sundstrand Property (currently billed to DJ # 90-11-3-945/3), together with associated indirect costs computed in accordance with DOJ's standard indirect cost accounting methodology.

c. EPA will no longer bill HSC for 25% of the actual Site-Wide Costs or any other fixed percentage of its actual Site-Wide Costs. For that reason, EPA bills will not be accompanied by an Itemized Cost Summary identifying any actual Site-Wide Costs. Instead, the Parties hereby agree that EPA's future bills for Future Response Costs will instead include, and HSC will pay, an Agreed Site-Wide Costs Amount. For the sake of clarity and simplicity, the Agreed Site-Wide Costs Amount will be computed, billed, and paid as an added 10% of the Hamilton Sundstrand Property-Specific Costs, not to exceed \$45 per day for each day within the time period encompassed by the bill. For example, the total bill for reimbursable Future Response Costs would be computed as follows if the Hamilton Sundstrand Property-Specific Costs amounted to \$450,000 in a two year time period (730 days):

Hamilton Sundstrand Property-Specific Costs	=	\$450,000
plus		
Agreed Site-Wide Costs Amount , computed as		
10% of Hamilton Sundstrand Property-Specific Costs	=	\$45,000
But not to exceed \$45 per day x 730 days	=	\$32,850
equals		-----
Total Future Response Costs for the period	=	\$482,850

d. The Parties agree that HSC's payment of periodic EPA bills for Hamilton Sundstrand Property-Specific Costs plus the Agreed Site-Wide Cost Amount will satisfy HSC's obligation to reimburse EPA's "Future Response Costs" under the 2008 Consent Decree. Upon EPA's receipt of HSC's payment of a bill for Hamilton Sundstrand Property-Specific Costs plus the Agreed Site-Wide Cost Amount, the funds will be credited and classified as "Future Response Costs" for all purposes under the 2008 Consent Decree, including but not limited to the purposes of affording the Parties certain protections and benefits under Section XXI (Covenants Not to Sue by Plaintiffs), Section XXII (Covenants by Settling Defendant), and Section XXIII (Effect of Settlement; Contribution Protection).

3. This Stipulation contains the entire agreement between the Parties with respect to the matters addressed herein. Each undersigned representative of the United States and HSC certifies that he or she is fully authorized to enter into the terms of this Stipulation and to legally bind such party to all terms of this agreement. This Stipulation shall take effect on the day it is filed with the Court in the above-captioned case (the "Effective Date").

IT IS SO STIPULATED.

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For the United States of America

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Dated: August 24, 2021

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Dated: August 11, 2021

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